

Control Number: 48785



Item Number: 115

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**SOAH CONSOLIDATED DOCKET NO. 473-19-1265**  
**PUC CONSOLIDATED DOCKET NO. 48785**

**JOINT APPLICATION OF ONCOR  
ELECTRIC DELIVERY COMPANY LLC,  
AEP TEXAS INC., AND LCRA  
TRANSMISSION SERVICES  
CORPORATION TO AMEND THEIR  
CERTIFICATES OF CONVENIENCE  
AND NECESSITY FOR 345-KV  
TRANSMISSION LINES IN PECOS,  
REEVES, AND WARD COUNTIES,  
TEXAS (SAND LAKE TO SOLSTICE  
AND BAKERSFIELD TO SOLSTICE)**

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**BEFORE THE STATE OFFICE**

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**OF**

**ADMINISTRATIVE HEARINGS**

**SOAH ORDER NO. 5**  
**DENYING OBJECTIONS AND MOTION TO STRIKE**

On January 18, 2019, Commission Staff filed Objections to and a Motion to Strike Portions of Intervenor Direct Testimony filed on behalf of five intervenors in this proceeding: Alan Zeman, Forrister Generation-Skipping Trust, Gale and Dorothy Smith, Terry Burkes (on behalf of COG Operating, LLC), and Albert Mendoza (on behalf of the group of intervenors referred to as Oxy.)

Staff's objections focus on three topics: (1) electromagnetic fields and associated generalized health and safety concerns; (2) anticipated future uses of property, or diminution in property values; and (3) disruption to oil and gas field-related construction or production due to transmission line outages or construction. Staff argues that, with regard to electromagnetic fields, expert testimony is required, and none of the intervenor witnesses have the "knowledge, skill, experience, training, or education" to testify as an expert on the alleged health effects of electromagnetic fields. Regarding the anticipated future uses of property and potential diminution in property values, Staff argues that these topics are not relevant considerations in approving or routing a proposed transmission line, and future use of property and property development is speculative because it may or may not occur and cannot be a factor in locating a transmission line. With regard to outages and construction delays, Staff argues that expert testimony is required, and none of the intervenor witnesses have the "knowledge, skill, experience, training, or education" to testify as an expert on alleged outages and construction delays. In the alternative, Staff requests that if the Administrative Law Judges (ALJs) find that the challenged portions of testimony are general


statements of concern reflecting community values, and thus decline to strike the testimony, that the testimony instead be accorded its appropriate weight.

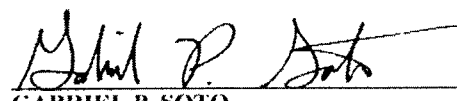
Each of the intervenors filed timely responses. Generally, the intervenors argue that the statements challenged by Staff are statements of concern reflecting community values that should not be struck from the record, and/or that the testimony expressing opinions with regard to oil and gas field development go to ongoing development, rather than speculative future development.

The ALJs overrule Staff's objections and deny its motion to strike, but grant Staff's alternative request regarding the weight to be accorded to the challenged testimony. The challenged testimony consists primarily of general statements of concern and lay opinions regarding exposure to electro-magnetic fields, possible diminished property values, and potential construction and/or production delays or damages caused by transmission line construction. These general statements and opinions are, in part, legitimate statements of concern reflecting community values. Further, testimony regarding current, ongoing development and operations is not as speculative or uncertain as testimony regarding future, potential land development. Motions to strike this type of testimony have been denied in numerous fairly recent electric transmission line proceedings, and the testimony was accorded its appropriate weight.<sup>1</sup>

For these reasons, Staff's objections and motion are **DENIED**. The testimony challenged by Staff will not be struck but, instead, will be considered to be intervenor statements of concern and given the appropriate evidentiary weight.

**SIGNED January 29, 2019.**

  
STEVEN H. NEINAST  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
GABRIEL P. SOTO  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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<sup>1</sup> See, e.g., the cases cited in Forrister Generation-Skipping Trust's Response to Commission Staff Objections and Motion to Strike Portions of Intervenor Direct Testimony, n.2 (January 24, 2019).